(1)S.B.CIVIL WRIT PETITION NO.2437/1994
(Sayar Mal Bhansali v. Labour Court, Jodhpur & Anr.)

(2)S.B.CIVIL WRIT PETITION NO.4383/1997
(Alcobex Metals Ltd. v. Labour Court, Jodhpur & Anr.)

(3)S.B.CIVIL WRIT PETITION NO.1146/1998
(Sayar Mal Bhansali v. Labour Court, Jodhpur & Anr.)

DATE OF ORDER :: 14th May, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Sayar Mal Bhansali, petitioner present in person.
Mr. P.K.Lohra] for the respondents.
Mr. A.K.Acharya, for Mr.L.R.Mehta]

(In SBCWP No.2437/1994)

Mr. P.K.Lohra, for the petitioner.
Mr. Sayar Mal Bhansali, respondent No.2 present in person.

(In SBCWP No.4383/1997)

Mr. Sayar Mal Bhansali, petitioner present in person.
Mr. P.K.Lohra, for the respondents.

(In SBCWP No.1146/1998)

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These three petitions for writ are essentially arising out of the common facts, therefore, are decided by this common order.

The appropriate government made a reference of an industrial dispute for its adjudication to Labour Court, Jodhpur in the terms as to whether termination of Shri Sayar Mal Bhansali son of Shri Labhmal Bhansali by his employer General Manager M/s

Alcobex Metals (Pvt.) Ltd., Heavy Industrial Area, Jodhpur is legal and justified? If not, then for what relief the workman is entitled?

The Labour Court found termination of the petitioner from service as retrenchment and that was effected without adhering mandatory condition precedent to do so. The Labour Court also found that during pendency of the dispute even at the stage of negotiations before the Conciliation Officer an offer was made by the employer to the workman to resume the duties but he did not choose to do so. On basis of the above findings the Labour Court ordered for reinstatement of the petitioner workman in service with wages from the date of retrenchment i.e. 1.7.1984 to 9.7.1985, the date on which offer was said to be made by the employer to the workman to resume duties.

SBCWP No.2437/1994

By this petition for writ a challenge is given by the petitioner workman to the award dated 3.11.1993 passed by Labour Court, Jodhpur to the extent it deny for payment of back wages beyond the period from 1.7.1984 to 9.7.1985.

The contention of the petitioner is that no bonafide offer was made by the employer for joining

the duties and further that once a retrenchment was found illegal, a direction should have been given to the employer to make payment of entire back wages. To substantiate the contention reliance is placed on the judgments of Hon'ble Supreme Court in the cases of Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court, Delhi [(57) FJR 67], and Gamon India Ltd. v. Niranjan Das (1984(1) SCC 509).

I am having no doubt that in the event of violation of pre-requisite as laid down in Section 25-F and 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act of 1947"), the retrenchment so made is ab-initio void and the workman retrenched illegally is entitled for the complete back wages, subject to the condition that the workman during the period facing termination must not be in any gainful employment, however, in the instant matter the principle referred above does not apply as a finding is given by the Labour Court that the workman himself did not choose to join the duties despite offer made by the employer. The Labour Court also considered the fact about the practice undertaken by the petitioner as an advocate. The relevant portion of the discussion made in this regard by Labour Court reads as follows:-

> "31. एक प्रश्न जो काफी महत्वपूर्ण है मेरे समक्ष यह है कि क्या इस मामले में श्री सायरमल के सेवा से निकाले जाने से लेकर

सेवा बहाली तक का पिछला वेतन व अन्य लाभ परिलाभ नियोजक से प्राप्त करने के अधिकारी है अथवा नहीं। इस सम्बन्ध में दो बाते स्पष्ट है। स्वंय श्री सायरमल स्वीकार करते हैं कि वह 24.7.88 से अधिवक्ता का काम कर रहे हैं। दूसरा तथ्य जो सामने आया वह यह है कि न्यायालय में जवाबदेही के समय से ही नियोजक यह कहता रहा है कि वह श्री सायरमल को पुन: काम पर लेने के लिए तैयार है। अपने जवाब में भी नियोजक ने यह बात कही है। यही नहीं बाद में एक प्रार्थना-पत्र प्रस्तुत करके नियोजक ने श्री सायरमल से आग्रह किया कि वह काम पर लौट आवे इसके पहले भी समझौता अधिकारी के समक्ष भी काम पर लौट आने के लिए सायरमल को कहा गया था। इस बात को सायरमल स्वंय अपनी जिरह में स्वीकार भी करता है। सायरमल का कहना है कि वह इसलिये काम पर नहीं लौटा कि इस न्यायाधिकरण के समक्ष भी ऐसा ही उज्र अपने जवाब में श्री सायरमल ने उठाया और जानना चाहा कि पुन: नियुक्ति पर नियोजक उन्हें अब क्या वेतन देगा और यह शर्त रखी कि नियोजक पिछला तमाम वेतन उन्हें अदा करे तभी वे काम पर वापस लौटेगें।

32. संयुक्त श्रम आयुक्त के समक्ष जो समझौता वार्ता चली उसमें एल्कोबेक्स की तरफ से जो जवाब दिया गया उसमें यह कहा गया हैं कि श्री भंसाली फेक्ट्री में जाकर अपनी डियूटी वापस शुरू कर सकते हैं। इस जवाब में यह भी कहा गया है कि नियोजक-पक्ष ने यह आश्वासन दिया है कि एक बार उनके द्वारा काम पर आ जाने पर उनके बकाया पैसों वगैरा के बारे में मामला तय कर लिया जायेगा। यह विवाद समझौता अधिकारी के समक्ष 25 मार्च 1985 के प्रार्थना-पत्र पर प्रारम्भ हुआ जिसमें पुन: काम पर आने के लिए अपने जवाब के जरिये नियोजक-पक्ष ने ओफर श्री भंसाली को 9.7.85 को दी। प्रश्न उठता है कि क्या ऐसी परिस्थिति में जबकि नियोजक-पक्ष ने बार-बार समझौता अधिकारी के सामने और इस न्यायाधिकरण के सामने भी श्री सायरमल को पुन: काम पर लौट आने के लिए ओफर दी और श्री सायरमल ने उसे स्वीकार नहीं किया तो फिर क्या वह पिछला वेतन 9.7.85 के बाद पाने

के अधिकारी हैं अथवा नहीं ।

33. जहाँ तक प्रार्थी द्वारा वकालत शुरू करने का सम्बन्ध है, विद्वान वकील प्रार्थी ने लेबर एण्ड इण्डस्ट्रीयल कैसेज 1989 एन.ओ.सी. 69 ईलाहबाद का निर्णय राजेन्द्रप्रसाद बनाम स्टेट ऑफ उत्तरप्रदेश प्रस्तुत किया है जिसमें कहा है कि अपने परिवार के भरण पोषण के लिए वकालत शुरू करना गैनफुल एम्पलोयमेन्ट नहीं है।

34. जो भी हो, श्री सायरमल सन् 1988 से वकालत कर रहे हैं और इसके बाद भी नियोजक द्वारा बार-बार काम पर लौट आने का ओफर देने के बावजूद वे काम पर नहीं लौटे यह कहते हुए कि उन्हें क्या दिया जायेगा और पिछला वेतन उन्हें पहनले चुकाया जाए। मेरे मत में ऐसी मांगे सायरमल नहीं रख सकते थे क्योंकि वह जिस पद पर कार्य कर रहे थे उसी पद का वेतन उन्हें स्वत: पुन: काम पर लौटने पर मिल जाता। जहॉ तक बकाया वेतन का प्रश्न है वह इस विवाद् में निर्णय के समय तय हो जाता लेकिन सायरमल ने नियोजक के प्रस्ताव को बार-बार ठुकरा कर वकालत का धन्धा चालू रखते हुए किसी ने किसी बहाने पर काम पर पुन: नहीं लौटकर ऐसा व्यवहार किया है कि जिसके मदेनजर उन्हें यह कहते हुए अब नहीं सुना जा सकता कि बिना काम किये ही उन्हें पिछला वेतन दिला दिया जाए। अत: मेरे मत् में उक्त तथ्यों के मदेनजर 9.7.85 के बाद से श्री सायरमल कोई बैक वैजेज या अन्य लाभ परिलाभ प्राप्त नहीं कर सकते।"

The findings above clearly establish that the workman himself opted to remain out of employment by not accepting the offer to resume duties made by the employer on 9.7.1985, therefore, in no case the employer can be burdened with a liability to make payment of wages after 9.7.1985.

During the course of hearing also, on asking by the Court, the petitioner in an unambiguous terms stated that he was/is not interested in reinstatement and as such his entire thrust is only for getting the back wages.

Be that as it may, learned Labour Court on basis of the evidence available on record rightly reached at the conclusion that the workman after 9.7.1985 was not entitled for getting back wages, thus the same suffers with no error that may warrant interference of this Court under Articles 226 and 227 of the Constitution of India.

SBCWP No.4383/1997

By this petition for writ a challenge is given by the employer to the order dated 23.10.1997 passed by the Labour Court, Jodhpur accepting an application preferred under Section 33-C(2) of the Act of 1947 by the respondent workman. By the order aforesaid the Labour Court directed the employer to make the payment of a sum of Rs.14860/- against the back wages and interest thereupon in a tune of Rs.7100/-. While giving challenge to the order aforesaid the contention of counsel for the petitioner is that by an award dated 3.11.1993 the Labour Court, Jodhpur while holding retrenchment of the respondent

workman illegal directed for making payment of wages for the period commencing from 1.7.1984 to 9.7.1985 but no direction was given for making payment of interest thereupon, as such while determining interest on the amount of back wages the Labour Court travelled beyond the jurisdiction vested with it.

It is asserted that no fresh entitlement could have been adjudicated under Section 33-C(2) of the Act of 1947.

Per contra, the stand of the respondent workman is that the grant of interest on back wages is an incidental matter, therefore, while determining the amount of back wages under Section 33-C(2) of the Act of 1947 the Labour Court is having ample power to grant interest.

Heard counsel for the parties.

It is well settled that the proceedings under Section 33-C(2) of the Act of 1947 are akin to execution proceedings. The Labour Court under Section 33-C(2) of the Act of 1947 is required to determine the money that is required to be paid to the workman for which he is entitled. The Labour Court by the award dated 3.11.1993 nowhere awarded interest upon the back wages, therefore, I am is of the opinion that no entitlement was there with the petitioner to get

the interest determined. I am in absolute agreement with counsel for the petitioner employer that the Labour Court travelled beyond the jurisdiction vested with it while granting a sum of Rs.7100/- against interest to the workman.

In view of whatever stated above this petition for writ deserves acceptance.

SBCWP No.1146/1998

By this petition for writ the petitioner workman while giving challenge to the order dated 23.10.1997 passed by the Labour Court exercising power under Section 33-C(2) of the Act of 1947 has claimed for the bonus for the period subsequent to 9.7.1985.

As stated, while considering the facts of SBCWP No.2437/1994 the workman by the award dated 3.11.1993 was declared entitled for getting wages pertaining to the period commencing from 1.7.1984 to 9.7.1985 only. It is well settled that the bonus is a part of wages and, therefore, for the period the petitioner was not declared entitled for the wages is also not entitled for getting bonus.

In view of it, I do not find any error in the finding given by the Labour Court that the workman is not entitled for bonus. For the period subsequent to

1.7.1984 to 9.7.1985. Accordingly, this petition for writ deserves dismissal.

For the reasons stated above the writ petition No.2437/1994 and 1146/1998 are dismissed and the writ petition No.4383/1997 is allowed. The order impugned dated 23.10.1997 passed by the Labour Court, Jodhpur is declared illegal to the extent it allows a sum of Rs.7100/- as interest to the respondent workman.

No order to costs.

(GOVIND MATHUR),J.

Kkm/ps.